

Mr. Eytan

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OBSERVATIONS ON ZAFRULLA KHAN'S SPEECH  
AT THE 645th MEETING OF THE SECURITY COUNCIL  
ON 5 DECEMBER 1953 (S/PV 645)

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The two fundamental arguments of the representatives of Pakistan are: The B'not Yeakov project is a contravention of the Armistice Agreement, and the project is contrary to the concept that questions of sovereignty regarding the Demilitarized Zone must not be raised.

1. Contravention of the GAA

Zefrullah Khan alleges that the project is a) contrary to the present provisions of the Armistice Agreement, b) that Gen. Bennike has ruled it to be so and c) that consequently the project cannot be executed unless the Agreement is amended.

a) The Armistice Agreement does not contain any provision whatsoever that could be interpreted as forbidding civilian development projects such as the B'not Yeakov hydroelectric canal. On the contrary, the decisions of the Mixed Armistice Commission, the rulings of the Chief of Staff and the Security Council debate and resolution of 1951 have all upheld the right to pursue within the Demilitarized Zone projects of economic development.

b) Gen. Bennike has not ruled the project to be an infringement of the Armistice Agreement. He has specified a number of issues and suggested that a solution should be found for them before the construction of the canal could proceed.

In his last letter of 20 October 1953 to the Minister for Foreign Affairs, the Chief of Staff declares:

"As Chairman of the Mixed Armistice Commission, I have had to undertake such a study and in connection with it, I have, as you indicate, raised points for clarification, while reserving my

conclusions as to the legitimacy or illegitimacy of the project until I had examined the matter under its various aspects", (S/3122, Annex III, p.5)

He has not since then changed his view. Indeed, this point is the very essence of the difference between Gen. Bennike's stand and that adopted by Syria and her supporters. Gen. Bennike seeks the solution of several well-defined issues which would permit the continuation of work. His request for a cessation of the work was a request for a temporary suspension until such solution could be reached - "until agreement is reached". *The points he raised for clarification are still before the Sec. Council.* On the other hand Syria, and in her footsteps, the representative of Pakistan, would prefer a determination that the project is a breach of the Armistice Agreement and consequently cannot be undertaken at all under the existing Armistice provisions. Syria and Zafrullah Khan have unwittingly given notice to the Security Council that Syria's real aim is not to obtain a recognition of alleged Syrian rights in the Demilitarized Zone, but to bring about an "a priori" decision that the project must be definitively stopped. Thus the veto is cast even before what Syria claims to be merely the "right of Syrian consent" is recognized.

c) Zafrullah Khan's solution of the matter is amendment of the Armistice Agreement. On page 11 of his speech he quotes the following sentence from Gen. Bennike's report:

"What is in question is the right to start work in the Demilitarized Zone in connection with the present canal project when the present provisions of the General Armistice Agreement are in force" (S/3122, Annex III, p.4)

Zafrullah Khan submits that this is the crux of the matter and interprets the question raised by the sentence as being "whether this project can proceed while the Armistice Agreement is in force without a modification of that agreement by the parties to that agreement". A careful study of General Bennike's report would inevitably show that the above citation is rather misplaced.

General Bennike said in his letter of 20 October to Mr. Sparetz:

"I agree with your statement that my conclusions are based on the examination of the three points you have summarized in your paragraph 6. I should like to add in this connection that they are based on no other consideration" (S/3122, Annex III, p.5)

The sentence quoted by the representative of Pakistan is an introductory sentence to a lengthy paragraph which deals with the requirement of the Chairman's concurrence with the B'not Yaakov canal project. This concurrence does indeed raise the question of the right to start work in the Demilitarized Zone; it is a limitation of that right under the existing Armistice provisions. It is, however, quite obvious that it does not exclude it but legitimizes it. Gen. Bennike has never suggested that amendments of the Agreement would be necessary or even desirable in order to enable the work to proceed.

## 2. Sovereignty

Zafrullah Khan does not use any new arguments regarding the question of sovereignty. All the passages he quotes from the interpretative note of 26 June 1949, from Gen. Riley's statement in 1951 and from provisions of the Armistice Agreement are evidence of the fact that Syria does not possess the right to interfere in the civilian development of the Demilitarized Zone. All texts speak of Israel, the Israelis, the local Arabs and the Chairman, never Syria.

Even Zafrullah Khan concedes that Syria has no status within the Demilitarized Zone.

He says:

"One further result follows -- and that has been stated at various places -- that where for the purpose of restoring local civil administration or normal civilian activity, it becomes necessary to arrange something on a larger basis than a village or a settlement,

and where that arrangement affects both local sides, the local Arabs who are affected and the local Israelis who are affected must agree under the supervision of the Commission, and then that arrangement can be carried out. For that kind of arrangement, which is purely local, designed towards promoting the restoration of normal civil activities or the setting up of the functioning of local administration, neither the agreement of Syria nor of the State of Israel is required."

Then he continues to say:

"But -- and this is the point to emphasize -- where anything would contravene any of the conditions of the Armistice, only an agreement between the parties, that is, Syria and Israel, could effect such a modification; and it is necessary to keep that distinction in mind."

It is questionable whether a contravention of the Armistice Agreement can only be settled by means of a modification of the Agreement. Contraventions of Art. V are not even settled in the Mixed Armistice Commission, where Syria is represented, but directly between Israel and the Chief of Staff. However, as shown above, Gen. Bennike has not declared the project to be a contravention of the Agreement requiring amendments; and consequently the entire argumentation of Zafullah Khan's that in this particular and exceptional case Syrian agreement is required is not valid.

In preparing his statement on sovereignty the representative of Pakistan was not aware of the exchange of letters on the subject that took place between Gen. Bennike and the Minister for Foreign Affairs after the beginning of the Security Council debate. The difference between the status of Israel in the Demilitarized Zone and the absence of any such status on the part of Syria is clearly illustrated therein.

Zafullah Khan says when referring to the interpretive note of Dr. Eunche's which makes clear these differences:

"A certain amount of confusion is caused by the use of the word 'Israeli' both for the people concerned and for the State of Israel." (S/PV 645, p.21).

However, as far as the Syrian delegation to the Armistice negotiations is concerned, there was no confusion at all with respect to the significance of those terms. The delegation made an unsuccessful attempt to eliminate the term "Israeli". It is to be observed that the delegation sought to create equality between Israel and Syrian rights in the Demilitarized Zone not by introducing Syria into the framework, but by eliminating Israel. It is strange that Syria today apparently supposes that her maneuver to gain recognition for a claim more extreme than the one she unsuccessfully put forward in the Armistice negotiations would remain entirely unnoticed.

Zafrullah Khan in fact concedes the point in the next sentence where he says: "We, however, quite clearly understand that, in the present context, all that is meant is territory under local Israeli control, and, on the other side, territory under Arab control - not under Syrian control."

### 3. Military Advantage

Zafrullah Khan raises once again the question of military advantage.

I would suggest that we use the same line of argument to rebut it conclusively as we did in the case of the Franco-British Agreements. (Please see pp. 19-23 of my observations on Zeineddine's speech of 10 November, and my letter to the Ambassador of 4 December).

Gen. Bennike's is a purely professional, military evaluation of the problem. This emerges quite clearly from his report. He does not enter into the legal implications of his conclusions. He quite frankly says: "From a purely military point of view, the existence of such a canal could permit the party controlling it to economize its forces in the area and increase them elsewhere". (S/3122, Annex III, p.8)

On pages 23-25, Zafrullah Khan accepts our contention regarding the value of the canal as an additional obstacle against aggression. He says:

"It is true that that arrangement would give the State of Israel greater security against aggressive designs and undertakings - and that is quite all right."

Then, however, he adds:

"Let us, suppose on the other hand, that the State of Israel was itself bent upon aggressive designs. It could, by diverting the River into the canal and by building any bridges it wished over the canal, make the River fordable for its forces."

Zafullah Khan did not consider of course the value of highways, linking the Demilitarized Zone with non-demilitarized territory, which have been constructed with the full concurrence of the Chairman, or of the boat service across Lake Tiberias from non-demilitarized to demilitarized territory.

As for the question of the construction of bridges, an argument that we have heard already from Zeineddine, it should be made clear once and for all that there is nothing in the Armistice Agreement that would prevent the construction of bridges across the Jordan as well.

The representative of Pakistan justifies the application of the military advantage principle by contending that "as the representative of Syria said the other day, the truce merged into and became part of the Armistice Agreement." (S/PV 645, p.26). This view is contrary to the specific decision taken by the Security Council on 11 August 1951. This has been elaborated in statements made before the Security Council during the aforesaid debate in August 1951.

At the 4 August 1951 meeting, the following exchange took place between the Acting Mediator and the Representative of Egypt:

"Mahmoud Fawzi Bey (Egypt): I am not now going to ask all the questions which I might feel impelled to put to Mr. Bunche. At the moment, however, I should like to ask him a question about one point which, if my understanding is correct, has been mentioned by the representative of France: I am referring to the correlation between the Truce and the Armistice Agreements. It seems to me that the representative of France was wondering whether the truce should be continued or discontinued under present circumstances and in spite of the Armistice Agreements. I should like some clarification from Mr. Bunche on this point, if possible.

"Mr. Bunche (Acting Mediator on Palestine): I shall be happy to attempt to answer the question put by the representative of Egypt. The situation, as I see it, is that the Security Council imposed a truce which did not envisage the end of the fighting but which, in its terms, merely provided that there would be no fighting. It left the armies arrayed against each other. It was indefinite in its duration, and it maintained a situation in which tension was inevitable.

"The Security Council then called on the parties to take a step looking toward the liquidation of the military phase of the conflict by the negotiation and conclusion of armistice agreements. The parties complied with that request, which was contained in the resolution of 16 November 1948 (S/1080).

"It seems to me that the conclusion of these Armistice Agreements, as I have indicated in my prepared statement, renders completely obsolete and unnecessary the truce and the conditions of the truce. Indeed, there was an obligation on the ~~part of the Security Council~~ part of the Security Council, which it seems to me is implicit in the resolution of 16 November 1948, to remove the burdensome restrictions of the truce once the parties had complied with the armistice request, because the Security Council called upon the parties to negotiate armistice agreements with a view to making a transition from truce to peace and provided for such matters as the demarcation of armistice lines and the withdrawal and reduction of forces for the purpose of ensuring the maintenance of the armistice pending the final peace settlement. There was, then, an implicit promise on the part of the Security Council that, once the parties had complied with the armistice call, the burdensome restrictions of the truce would be removed because the truce would have been superseded. Since every front in Palestine is now covered by an armistice agreement, I think the situation calls for a recognition by the Security Council of the fact that a forward step has been taken which renders unnecessary any retention of the truce or of the truce machinery.

"I hope that clarifies the point raised by the representative of Egypt.

"Mahmoud Fawzi Bey (Egypt): I wish to take note of the answer just given by Dr. Bunche, from which I understand that he told us, among other things, that he considers that the Armistice Agreements render obsolete - completely obsolete, according to what he said - the truce and its machinery, including the restrictions.

"I take it that when he talks of the restrictions of the truce, Dr. Bunche means such resolutions of the Security Council as those of 15 July 1948 (S/902), 29 May 1948 (S/801), or any other resolution connected with the truce and imposing restrictions. I wish to thank Dr. Bunche for the clear answer he has given to my question."

(S.C.O.R., 4th year, No. 36 pages 8 & 9)

At the same meeting Dr. Bunche said:

"The parties have now fully complied with this request. It follows inescapably that the Security Council truce resolution has been rendered obsolete by the conclusion of the Armistice Agreements (S/1264, S/1296, S/1302/Rev.1 and S/1353). These resolutions continue in force, however, and they will remain in force until the Security Council takes appropriate action concerning them. They are not self-terminating, and if they are not cancelled, they will lead only to confusion and misunderstandings."

"The Armistice Agreements are not the final peace settlement, but the only possible interpretation of their very specific provisions is that they signal the end of the military phase of the Palestine situation. The objective now clearly should be to restore normal conditions of peace to the fullest possible extent. There can be little doubt that both sides desire to be freed from the many burdensome restrictions and interferences which were imposed under the truce. The entire heritage of restrictions which developed out of the undeclared war should be done away with. There should be normal access, restrictions on importation and immigration should be eliminated, there should be free movement for legitimate shipping, and no vestiges of the wartime blockade should be allowed to remain as they are inconsistent with both the letter and the spirit of the Armistice Agreements."

(S.C.O.R., 4th year, No. 36 pages 5 & 6).

The representative of the United Kingdom declared:

"My delegation shares, in general, the conclusions which Mr. Bunche has set out at the end of his report, and we also endorse the remarks which he has made at this table today. We subscribe to his view that the restrictions imposed by the truce agreements should now be waived and that normal conditions should be restored at the earliest possible moment."

(S.C.O.R., 4TH YEAR, No. 36 page 21)

The representative of the U.S., referring to the final revised version of the draft resolution stated:

"The revision makes it clear that the Security Council reaffirms and maintains the order to the Governments concerned to observe the unconditional cease-fire contained in its resolution of 15 July 1948 (S/902) pursuant to Article 40 of the United Nations Charter. Although the more severe prohibitions contained in that resolution and in the preceding resolution of 29 May (S/801) have been outmoded by the Armistice Agreements, the order to the parties to observe a cease-fire should, and under this draft resolution would, continue in force and be binding upon all parties."

(S.C.O.R. 4th year, No. 38 page 5)



The representative of France said:

"..... if I have understood correctly, we are now prepared to state that there is no longer any truce", (S.C.O.R., 4th year No. 36, page 34).

On the specific issue of restrictions on arms shipments, which constituted the most important restriction resulting from the truce resolution that forbade any military or political advantage to be gained under the truce (Sec. Council Resolution of 29 May 1948) the following declarations were made in reply to a statement on the subject by Mr. Eban:

Sir Terence Shone (U.K.):

"..... there is one matter to which Mr. Bunché referred briefly, and to which Mr. Eban referred at greater length this morning, and on which I should like to make a brief statement. I refer to the supply of war materiel. In this connexion, I would again emphasize what I believe is well known to members of this Council: the great respect which my Government has paid to the requirements of the truce resolution (S/723), despite our treaty obligations to Arab States. We are anxious to fulfil our engagements to them. This, of course, does not mean that we wish anything in the nature of an arms race, to which Mr. Eban made allusion, to develop in the Middle East or anywhere else. Far from it. Any supplies of arms which we may send would be for the internal security and defence requirements of the States concerned. These are legitimate requirements for any State, and, in so far as the Middle East is concerned, are indeed essential to the normal conditions which we wish to see restored. We, for our part, would not be in favour of Middle Eastern States acquiring war materiel in excess of their legitimate defence requirements, and we believe the States themselves would not wish to exceed such limitations. (S.C.O.R., 4th year No. 36 page 21)

Dr. Bunché:

"It has been suggested that I might comment upon the statements made by the representative of the United Kingdom, Sir Terence Shone, the representative of Israel, Mr. Eban, relative to the question of an injunction against the importation of war materials. I fully realize that if the Security Council were to act along the lines suggested in the memorandum attached to my report and were to take no further action providing for an arms embargo, the existing injunctions against the importation of war materials, along with the restrictions on the introduction of fighting personnel and men of military age, would be completely eliminated, as the entire system of truce supervision would be. In this regard I would point out that the injunction against the importation of war materials under the truce was complete. It was not a qualified injunction; it took no account whatsoever of the internal security needs of any of

the States parties to this dispute. Certainly, should an arms race develop in that area as a result of the lifting of the existing injunction, it would not serve the interests of permanent peace in the Near East. But I am strongly of the view on the basis of the experience we have had in the Near East with the truce supervision during these past months that no half-way measure will serve any useful purpose."

J.T.

8 Dec. 1953